IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 277 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF GOVINDJI J THAKOR

Versus

HEIRS OF ISHWARLAL A SHAH

Appearance:

MR P.K. JANI for Petitioners

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 02/03/2001

ORAL JUDGEMENT

This is tenant's revision under Section 29(2) of The Bombay Rent Act, against concurrent judgement and decree of the lower appellate Court.

2. Briefly stated, the facts are that suit for

eviction of the tenant was filed by the landlord on the sole ground that the tenant was in arrears of rent exceeding six months, which he did not pay despite service of notice of demand within a period of one month of such notice.

3. The suit was resisted by the tenant on the ground that there was dispute of standard rent and that initially the rate of rent was Rs. 1.50 paise per month and the rent at the rate of Rs. 4.50 paise per month is excessive. The tenant also pleaded payment of rent upto 31.12.1983. Rent was also deposited in the trial Court.

4. The suit was dismissed by the trial Court holding that the provisions of Section 12(3)(b) are attracted, inasmuch as there was dispute of standard rent between the landlord and the tenant and such dispute was not resolved till decision of the suit.

5. Feeling aggrieved, the land-lord preferred appeal. The appellate Court reversed the finding of the trial Court that Section 12(3)(b) is attracted on the facts and circumstances of the case. Consequently, after setting aside the judgement and decree of the trial Court, the appellate Court granted decree for possession in favour of the landlord against the tenant.

6. Feeling aggrieved, the tenant has filed this revision.

7. The respondents are served, but nobody has appeared on their behalf. As such Shri P.K.Jani, learned Counsel for the revisionist was heard and the judgement of the lower appellate Court has been carefully examined. After going through the judgement of the lower appellate Court, I have no hesitation in observing that the case was covered fully under Section 12(3)(a) of The Bombay Rent Act. The case of the landlord was that the rent from 1.9.1973 was due from the tenant. On 1.8.1982, notice of demand and ejectment was served by registered post, but the defendants neither replied the notice, nor paid any rent, nor handed over possession of the accommodation. According to the defendants, rent upto 31.12.1983 was paid, but the plaintiffs have not issued receipts. The lower appellate Court disbelieved this stand of the defendants by observing that no receipt was filed, nor any reliable evidence on payment of rent upto 31.12.1983 was produced. The finding on question of payment of rent is a finding of fact which is based upon proper appreciation of evidence of record, hence it requires no interference in revision. If the defendants'

plea that rent upto 31.12.1983 was paid was disbelieved by the lower appellate Court, then it has to be held that the rent exceeding six months was evidently due on the date of service of notice, namely - on 1.8.1982. It is also evident that after receipt of notice, no rent was paid by the tenant. Consequently, outstanding arrears of rent exceeding six months on the date of notice is established. The other condition that arrears of rent was not paid within a month of service of notice is also established.

8. The third condition for applicability of Section 12(3)(a) is that there should be no dispute regarding standard rent. The defendants attempted to raise dispute of standard rent, but not within the statutory period. No application raising dispute of the standard rent was moved prior to 1.8.1982 when the notice of demand was served on them. They did not move any application prior to this date for fixation of standard rent. They also did not raise any dispute of standard rent within a month of service of notice of demand. For the first time they raised dispute of standard rent only when they filed their written statement which was obviously beyond 30 days of receipt of notice of demand. Consequently, the lower appellate Court relying upon catena of decisions on this point, rightly held that there was no dispute of standard rent.

9. It may also be mentioned that the observation of the lower appellate Court that the dispute of standard rent was not bonafide has also to be accepted. The lower appellate Court has observed that in the year 1943 the rent might have been at the rate of Rs. 1.50 paise per month, but gradually with the consent of the parties it was enhanced to Rs. 4.50 paise per month and this was the standard rent which was determined by the trial Court as well. Consequently, the dispute of standard rent is not bonafide. As such on this ground also it is difficult to take the case out of the ambit of Section 12(3)(a) of the Bombay Rent Act.

10. Another contention before the lower appellate Court was that the tenancy was not monthly, hence also Section 12(3)(a) is not attracted. On this point the lower appellate Court has rightly repelled the defendants' plea that simply because the rent was paid some times for six months, some times for seven months, it does not change the tenancy from monthly to annual tenancy. Needless to say that the mode of payment of rent will not change the nature of tenancy. Annual tenancy can be created only by registered instrument. There is no registered lease-deed

in the instant case. Consequently, there will be presumption of monthly tenancy in the instant case. There is no dispute that Rs. 4.50 paise included the education cess and other taxes. As such also it seems difficult to take the case out of the ambit of Section 12(3)(a) of the Act.

11. If the case is covered by Section 12(3)(a) of the Act, the trial Court was in error in holding that it was covered by Section 12(3)(b) and the tenant was entitled to protection of Section 12(3)(b). It is settled law by now that if the case is covered by Section 12(3)(a), the Court have no option but to decree the suit for eviction. As such the lower appellate Court was justified in granting decree for eviction.

12. The dispute of standard rent was rightly resolved by the trial Court which was affirmed by the appellate Court vide paragraph 23 of the judgement by holding that Rs. 4.50 paise per month which was said to be contractual rent is neither excessive, nor fabulous and therefore, this is reasonable standard rent of the suit premises. This amount, according to the lower appellate Court, is inclusive of all taxes. As such no interference on this finding is also needed.

13. In the result, I do not find any merit in this revision, which is hereby dismissed. No order as to costs.

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